



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9967-87-Region 3]

Delegation of Authority to the Commonwealth of Virginia to Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On May 11, 2017, the Environmental Protection Agency (EPA) sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On May 11, 2017, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce federal NESHAPs had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Emily Linn, (215) 814-5273, or by e-mail at linn.emily@epa.gov.

SUPPLEMENTARY INFORMATION: On February 27, 2017, Virginia notified EPA that

Virginia had updated its incorporation by reference of federal NESHAPs to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2016. On May 11, 2017, EPA sent Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAPs as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports, and other correspondence required pursuant to the delegated NESHAPs must be submitted to both the EPA, Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

“Michael G. Dowd, Director
Air Division
Virginia Department of
Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and National Emission Standards for Hazardous Air Pollutants for Source Categories (MACT standards) which are found at 40 CFR Parts 60, 61 and 63, respectively. In those actions, EPA also delegated to Virginia the authority to implement and enforce any future federal NSPS, NESHAP or MACT Standards on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated February 27, 2017, Virginia submitted to EPA revised versions of Virginia's regulations which incorporate by reference specified federal NSPS, NESHAP and MACT standards, as those federal standards had been published in final form in the Code of Federal Regulations dated July 1, 2016. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority and made only allowed wording changes.

Virginia stated that it had submitted the revisions "to retain its authority to enforce the NSPSs and NESHAPs under the delegation of authority granted by EPA on August 27, 1981 (46 FR 43300) and to enforce the MACT standards under the delegation of authority granted by EPA on January 26, 1999 (64 FR 3938) and January 8, 2002 (67 FR 825)."

Virginia provided copies of its revised regulations which specify the NSPS, NESHAP and MACT Standards which it had adopted by reference. Virginia's revised regulations are entitled 9 VAC 5-50 "New and Modified Stationary Sources," and 9 VAC 5-60 "Hazardous Air Pollutant Sources." These revised regulations have an effective date of February 22, 2017.

Virginia stated in its submittal letter that "Virginia may not accept delegation of a standard based on an assessment of implementation and enforcement commitments. The following standard is affected at this time: Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015...."

Virginia further explained regarding Subpart 0000a that "[a]uthority to enforce this standard is being retained by EPA and it is not incorporated by reference into the Virginia regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as

defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).”

In the regulations that it submitted Virginia also indicates various other EPA standards that the State had previously chosen not to adopt by reference or had chosen to adopt by reference only for certain specified sizes, etc. of sources.

Based on Virginia’s submittal, EPA acknowledges that EPA’s delegations to Virginia of the authority implement and enforce EPA’s NSPS, NESHAP, and MACT Standards have been updated, as provided for under the terms of EPA’s previous delegation of authority actions, to allow the Virginia to implement and enforce the federal NSPS, NESHAP, and MACT standards which Virginia has adopted by reference as specified in Virginia’s revised regulations 9 VAC 5-50 and 9 VAC 5-60, both effective on February 22, 2017.

Please note that on December 19, 2008, in *Sierra Club v. EPA*,¹ the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Virginia incorporated 40 CFR Part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court’s ruling in *Sierra Club vs. EPA*.

¹ *Sierra Club v. EPA*, 551 F.3rd 1019 (D.C. Cir. 2008).

EPA appreciates Virginia's continuing NSPS, NESHAP, and MACT standards enforcement efforts, and also Virginia's decision to take automatic delegation of additional or updated NSPS, NESHAP and MACT standards by adopting them by reference.

Sincerely,

Cristina Fernandez, Director
Air Protection Division"

This notice acknowledges the update of Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: September 6, 2017.

Cristina Fernandez, Director,
Air Protection Division,
Region III.

6560-50-P

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